

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DANIEL MITCHELL, ROBIN BALL, LUKE
RETTMER, NATHANIEL CASEY, MATTHEW
WALD, SECOND AMENDMENT FOUNDATION,
AND NATIONAL RIFLE ASSOCIATION,

Plaintiffs,

v.

CHUCK ATKINS, in his official capacity as the
Sheriff of Clark County, Washington, CRAIG
MEIDL, in his official capacity as the Chief of Police
of Spokane, Washington, and TERESA BERNTSEN,
in her official capacity as the director of the
Washington State Department of Licensing,

Defendants,

and

SAFE SCHOOLS SAFE COMMUNITIES,

Defendant-Intervenor.

NO. 3:19-CV-05106-RBL

**MOTION OF *AMICI CURIAE*
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
AND BRADY FOR LEAVE TO
FILE AMICUS BRIEF IN
SUPPORT OF DEFENDANTS'
CROSS-MOTION FOR
SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

**NOTE ON MOTION
CALENDAR:**

April 24, 2020

1 1. Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”)¹ and
 2 Brady (together, “the *Amici*”) respectfully move for leave to file the attached *Amicus* Brief and
 3 supporting Declaration of Bonnie MacNaughton, in support of Defendants and Intervenor-
 4 Defendant’s Motion for Summary Judgment, Dkt. 84. Defendants consent to this Motion;
 5 Plaintiffs do not consent.

6 2. *Amicus curiae* Giffords Law Center is a non-profit policy organization dedicated
 7 to researching, writing, enacting, and defending laws and programs proven to effectively reduce
 8 gun violence. The organization was founded more than a quarter-century ago following a gun
 9 massacre at a San Francisco law firm and was renamed Giffords Law Center in October 2017
 10 after joining forces with the gun-safety organization founded by former Congresswoman
 11 Gabrielle Giffords. Today, Giffords Law Center provides free assistance and expertise to
 12 lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to
 13 improve the safety of their communities. Giffords Law Center has provided informed analysis as
 14 an *amicus* in many firearm-related cases, including in *Hirschfeld v. Bureau of Alcohol, Tobacco,*
 15 *Firearms & Explosives*, 417 F. Supp. 3d 747 (W.D. Va. 2019), *District of Columbia v. Heller*,
 16 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *Fyock v. City of*
 17 *Sunnyvale*, 779 F.3d 991 (9th Cir. 2015), and *Teixeira v. County of Alameda*, 873 F.3d 670 (9th
 18 Cir. 2017) (*en banc*).²

19 3. *Amicus curiae* Brady (formerly the Brady Center to Prevent Gun Violence) is a
 20 non-profit organization dedicated to reducing gun violence through education, research, and
 21 legal advocacy. Brady has a substantial interest in ensuring that the Constitution and state laws
 22 are properly interpreted to allow strong government action to prevent gun violence. Through its
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24 ¹ Giffords Law Center was previously named Law Center to Prevent Gun Violence, and Legal Community
 25 Against Violence.

26 ² Several courts have cited research and information from Giffords Law Center’s *amicus* briefs in Second
 27 Amendment rulings. *E.g.*, *Hirschfeld*, 417 F. Supp. 3d at 754, 759; *Ass’n of N.J. Rifle & Pistol Clubs v. Attorney*
Gen. N.J., 910 F.3d 106, 121-22 (3d Cir. 2018); *Md. Shall Issue v. Hogan*, 353 F. Supp. 3d 400, 403-05 (D. Md.
 2018); *Stimmel v. Sessions*, 879 F.3d 198, 204, 208, 210 (6th Cir. 2018); *Peruta v. County of San Diego*, 824 F.3d
 919, 943 (9th Cir. 2016) (*en banc*) (Graber, J., concurring).

1 Legal Action Project, Brady has filed numerous briefs in support of government regulation of
 2 firearms, including *McDonald v. City of Chicago*, 561 U.S. 742 (2010), *United States v. Hayes*,
 3 555 U.S. 415 (2009), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *Washington v.*
 4 *State Department*, No. 2:20-cv-00111-RAJ (W.D. Wash. 2020). Further, Brady filed *amicus*
 5 briefs supporting federal minimum-age laws in *National Rifle Association of America, Inc. v.*
 6 *Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (5th Cir. 2012) and
 7 *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, No. 19-2250 (4th Cir. 2020).

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 9 4. *Amici* have significant expertise with laws restricting firearm purchase by minors
 10 under the age of 21, and represent the interests of citizens who benefit from those laws.³ The
 11 proposed *amicus* brief, attached to this Motion, provides the Court with data demonstrating that
 12 (i) young people aged 18 to 20 are at higher risk of using firearms to attempt suicide, (ii) this
 13 group is disproportionately likely to carry out mass shootings at schools using a semiautomatic
 14 assault rifle, and (iii) the challenged law defines “semiautomatic assault rifles” so that it
 15 regulates the subset of rifles likely to be the most lethal if misused. This data confirms that there
 16 is a reasonable fit between Washington’s restrictions on 18-to-20-year-olds’ purchase of
 17 semiautomatic assault rifles and the state’s important interest in public safety.

18 5. A “district court has broad discretion to appoint amici curiae.” *Hoptowit v. Ray*,
 19 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds*, *Sandin v. Conner*, 515 U.S.
 20 472 (1995). The Court’s discretion may be informed by Federal Rule of Appellate Procedure 29,
 21 which requires explanation of “why an amicus brief is desirable and why the matters asserted are
 22 relevant to the disposition of the case.” Fed. R. App. P. 29(a)(3)(B). The appellate rule allows
 23 prospective *amici curiae* to submit a proposed brief accompanied by a motion for leave to file up
 24 to “7 days after the principal brief of the party being supported” is filed, Fed. R. App. P. 29(a)(6).
 25 The attached brief is timely under this rule. *See Microsoft Corp. v. U.S. Dep’t of Justice*, 2016

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 27 ³ See, e.g., *Minimum Age to Purchase & Possess*, Giffords Law Center, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/> (last visited Apr. 6, 2020).

1 WL 4506808, at *9 (W.D. Wash. Aug. 29, 2016) (analogizing “to the applicable rules found in
2 the Federal Rules of Appellate Procedure” and permitting nonparty to file *amicus* brief “no later
3 than seven days after ‘the principal brief of the party being supported is filed’”) (quoting Fed. R.
4 App. P. 29(a)(6)).

5 6. The “classic role” of *amici curiae* is “assisting in a case of general public interest,
6 supplementing the efforts of counsel, and drawing the court’s attention to law that escaped
7 consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th
8 Cir. 1982). “District courts frequently welcome *amicus* briefs from non-parties ‘concerning legal
9 issues that have potential ramifications beyond the parties directly involved or if the amicus has
10 unique information or perspective that can help the court beyond the help that the lawyers for the
11 parties are able to provide.’” *Chong Yim v. City of Seattle*, 2018 WL 5825965, at *1 (W.D.
12 Wash. Nov. 7, 2018) (quoting *Skokomish Indian Tribe v. Goldmark*, 2013 WL 5720053, at *1
13 (W.D. Wash. Oct. 21, 2013)). “[T]here is no rule that amici must be totally disinterested,” and it
14 is “a perfectly permissible role for an amicus” to “take a legal position and present legal
15 arguments in support of it.” *Funbus Sys., Inc. v. State of Cal. Pub. Utilities Comm’n*, 801 F.2d
16 1120, 1125 (9th Cir. 1986).

17 7. More specifically, district and appellate courts in the Ninth Circuit have found
18 *amicus* briefs appropriate in cases raising Second Amendment questions, including *amicus* briefs
19 submitted by Giffords Law Center, Brady, and other gun-violence-prevention groups. *See, e.g.*,
20 *Peruta*, 824 F.3d at 943 (Graber, J., concurring) (citing Giffords Law Center brief (under former
21 name Law Center to Prevent Gun Violence) in upholding California’s restrictions on concealed
22 firearms); *Fyock*, No. 14-15408, Dkt. 83 (9th Cir. Oct. 21, 2014) (granting motion of Brady
23 Center to Prevent Gun Violence and the Major Chiefs Association to file *amicus* brief); *Rupp v.*
24 *Becerra*, 401 F. Supp. 3d 978, 991 (C.D. Cal. 2019) (relying on statistics from “Everytown for
25 Gun Safety’s amicus brief”).
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1 8. This Court has also previously authorized the filing of *amicus* briefs in cases that,
2 like this one, raise important constitutional questions. *See Rynearson v. Ferguson*, No. 17-cv-
3 05531, Dkt. 51 (W.D. Wash. Oct. 19, 2018) (granting motion for leave by third-party advocacy
4 group to file *amicus* brief concerning First Amendment issues); *Hopper v. Melendez*, No. 05-cv-
5 5680, Dkt. 182 (W.D. Wash. Oct. 23, 2007) (granting motion for leave by third-party advocacy
6 group to file *amicus* brief concerning constitutional dimension of the right to counsel in
7 immigration proceedings).

8 9. *Amici*'s participation is desirable because the organizations have substantial
9 expertise with the minimum-age restriction at issue in this case and the relevant data and social
10 science demonstrating its effectiveness. The important constitutional principles at stake here—
11 including Washington's ability to protect public safety through calibrated firearm regulations—
12 are fundamental to *Amici*'s missions and critically important to their supporters. Their proposed
13 *amicus* brief can help the Court evaluate the parties' claims by presenting data and social science
14 that support Washington's restrictions on 18-to-20-year-olds' ability to purchase firearms.

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16 For the foregoing reasons, Giffords Law Center and Brady respectfully request that the
17 Court grant their motion for leave to file an *amicus* brief.
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1 April 7, 2020

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